IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 460 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/03/2005 in WP NO : 2264 OF 2005 on the file of the High Court.)

Between:

Nageswara Service Station, Rep. by its Proprietor M. V. Nageswara Rao, S/o. M.V. Narasimham, Aged about 61 Years, R/o. D.No. 5-40-15, 5/7, Brodipet, Guntur.

..... APPELLANT

AND

1 The Government of Andhra Pradesh, Rep. by its Secretary,
Roads & Buildings Department, Secretariat, Saifabad, Hyderabad.
2 The Collector, Guntur District.
3 The Municipal Corporation of Guntur, Rep. by its Commissioner.
4 The Superintending Engineer, R &B Department, Guntur, Guntur District.

.....RESPONDENTS

Counsel for the Appellant : MR. S. RAMACHANDRA RAO FOR MR. K.R.PRABHAKAR

Counsel for the Respondent Nos. 1, 2 & 4: GP FOR ROADS & BUILDINGS

Counsel for the respondent No.3: MR. T.S. VENKATARAMANA, SC FOR MUNICIPAL CORPORATION.

The Court at the admission stage made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. Challenge in this appeal is to the order passed by the learned single Judge

dismissing the appellant's writ petition. Appellant is a owner of petrol bunk by name and style of Nageswara Service Station located towards Collectorate side and the road over bridge being constructed at Kankaragunta gate in Guntur Municipal Corporation limits, and feeling aggrieved by the action of the respondents in laying over bridge over a length of 466 metres towards Collectorate side as compared to 406.384 metres on Jute Mill side, approached this Court by filing writ petition questioning the action of the respondents in doing so saying that it is arbitrary, illegal and contrary to law and in violation of the fundamental rights of the petitioner and actuated malice in law and consequently sought direction against respondents to strictly follow the opinion rendered by the Superintendent Engineer, R & B Department, Guntur, in his letter dated 04.10.2004 addressed to the Managing Director, A.P.R.D.C., Engineer-in-Chief, R & B Admn., & NABARD, Hyderabad.

2. Writ petition was opposed by the respondents. Superintendent Engineer (R & B) in his affidavit in reply has pointed out that administrative approval for Rs.940.00 lakhs was accorded for construction of road over bridge at Kankaragunta Gate in Guntur Municipal Corporation limits at L.C.No.313 at Railway Km a/31-33 of Guntur – Donakonda Section in Guntur District for development of the Guntur town to regulate the heavy traffic. It was also proposed that the State Government's share will be Rs.538.00 lakhs and Railway's share will be Rs.402.00 lakhs. The estimates for the work of construction technically were sanctioned for Rs.940.00 lakhs on 15.12.2003. Work was entrusted to Sri A.Venkateshwarlu, Contractor, Ongole, at 12.25% less on tender basis on 01.07.2004. Site was handed over to the contractor on 01.07.2004 for completion within a period of 18 months. Based upon the approved designs and drawings, contractor started the work and completed non-vented portion on Jute Mill side. On Collectorate side, left side retaining walls of non-vented portion was completed and the work is in progress. Total value of the work done is approximately Rs.1.00 crore and the contractor has procured the materials like cement, etc. The reason for keeping the length of the bridge portion at 466.384 metres towards Collectorate side and 406.384 metres towards jute mill side is for the following reasons.

> " The existing level of the Railway Track is + 10.21 metres and the road crust level approved by the Railway authorities is + 19.006 metres. The existing ground level on Collectorate side is + 8.285 metres and on jute mill side + 9.825 metres and the ground level on jute mill side is in higher level of 1.54 metres than the Collectorate side. Based on the approved R.C.L. of + 19.006 metres and the approach gradients of 1 in 40, the approaches length are 466.384 metres on Collectorate side and 406.384 metres on jute mill side. The difference length of 60 metres between two sides is due to difference in ground level of 1.54 metres only. The Railway authorities have also approved the above design keeping the height of the bridge proper to be constructed by the Railways".

3. The Superintending Engineer thereafter has stated that proposal for slight deviation of the design for reducing the length of approach on Collectorate side to 430 metres explaining the reasons for smooth passing of vehicular traffic coming from 14th cross road was submitted to the Managing Director, A.P. Road Development Corporation and Engineer-in-Chief (R & B) Administration & NABARD, Hyderabad, who are the highest technical sanctioning authorities to the department. Though the proposal was submitted, but highest technical sanctioning authority did not agree since it involves Railways concurrence and thus instructed the Superintending Engineer (R & B), Guntur, to follow the original proposals.

4. Needless to add that petitioner relied upon the proposal of Superintending Engineer as the basis for reduction of the length which proposal in fact had requested the A.P. Road Development Corporation to accord technical sanction for reduction in length, and also of the communication dated 08.10.2004 from the Managing Director, A.P. Road Development Corporation informing that the proposal received is not being accepted since it involves Railways concurrence. Therefore, the Superintendent Engineer was directed to take further necessary action and report compliance. Petitioner in the writ petition did not question the same and also did not bother to implead A.P. Road Development Corporation as a party to the writ petition. He also did not proceed to implead Engineer-in-Chief (R & B) as a party and did not question the legality and validity of the proceedings of the Managing Director, A.P.

Road Development Corporation dated 08.10.2004 which had given direction to the Superintending Engineer to follow the originally agreed proposals on the ground that any deviation of gradient @ Chianage of 449 metres i.e., 14th cross road, Brodipeta, is not agreed.

5. The Superintending Engineer in his affidavit further asserted that petitioner, who is the owner of the petrol bunk, will not suffer any loss due to construction of ROB up to 466.384 metres towards Collectorate side and service roads will be formed on either sides of the ROB for passage of the vehicles to take oils in the petrol bunk and there will not be any problem to the traffic also passing through the railway gate at 14th cross road. It was also pointed out that no land of the petitioner's petrol bunk was acquired for construction of the ROB and there is no loss to the petitioner and no livelihood will be deprived as there are so many approaches to the petitioner's petrol bunk and a service road will be formed between bridge and petrol bunk along with the bridge. It is also stated that over 1200 people who are residing nearby stated to have made a representation, but it is stated that 1200 people are not at all concerned with the construction since nobody's property was acquired.

6. Taking note of the stand of the respective parties, learned single Judge proceeded to dismiss the writ petition observing that it is for the technical sanctioning authority to take appropriate decision based on relevant factors and the Court in exercise of writ jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over the decision of the administrative authority. Depending upon the ground level on either side of the over bridge, the approach level has been fixed. The same cannot be shown to be arbitrary exercise of power. It was also observed that if the power has been exercised on non-application of mind, the same will be recorded as manifestly error. Learned single Judge also observed that in the absence of any challenge to the technical sanctioning vide Memo dated 15.12.2003 and administrative sanction accorded in G.O.Ms.No.186, dated 28.10.2003, writ petition cannot be allowed.

7 . Learned counsel for the appellant has submitted that Superintending Engineer has given technical opinion with cogent reasons in reducing the length of the road over bridge towards Collectorate side which ought to have been adhered to or in any case it has to be adhered to since the same would meet the appellant's case and there will not be any further inconvenience to the appellant. Moreover when on one side, the length of 406 metres was being adhered to, there was no reason why on the other side there should be length of 466 metres and it was also contended that the petitioner had no reason to challenge G.O.Ms.No.186, dated 28.10.2003 which was filed by the respondents along with their counter-affidavit. Learned counsel for the respondents reiterated the same submission which was made before the learned single Judge.

8. We have duly considered the respective submissions made at the bar and are of the view that hardly any interference is called for by this Court in such like matters. It has not been demonstrated before us that the technical sanction is not in consonance with any other principles. The only grievance of the appellant is that the length of road over bridge towards Collectorate side should be reduced so that over bridge should join the main road before his petrol bunk and there should not be any obstruction to the petrol bunk and for that reason a reliance was placed on the recommendation of the Superintending Engineer in his letter addressed to A.P. Road Development Corporation and Engineer-in-Chief, Hyderabad. Petitioner except relying upon the said recommendation did not make reference to the outcome of the recommendation of the Superintending Engineer and did not challenge the subsequent action of the concerned authorities. Needless to add that the technical sanction was accorded on 15.12.2003 and the highest technical sanctioning authority comprised of the A.P. Road Development Corporation and Engineer-in-Chief & NABARD. Highest technical sanctioning authority duly considered the proposal of Superintending Engineer and rejected the same by its communication dated 08.10.2004 which was not challenged in the writ petition though copy of the same has been placed on record. Writ

petition was filed by the petitioner on 09.02.2005 after the work had already been awarded to the Contractor and based on the work of the other side of the approach road has been completed. We are of the view that in order to stall the construction work to the Collectorate side, petitioner filed writ petition alleging that there should be no obstruction in front of the petrol bunk without disclosing as to how and in what manner injury would be caused to him. Petitioner – appellant cannot claim any easementary right in such developmental work or some inconvenience would be caused to someone. Respondents have demonstrated that a service road is provided in front of the petrol bunk so as to enable the petrol tank to reach the petrol bunk. There are so many approach roads to the petrol bunk. Moreover, no acquisition of land is involved in the case. Under these circumstances, learned single Judge was justified in dismissing the writ petition. We find no merits in the appeal.

9. In the result, writ appeal fails and is dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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B. SESHASAYANA REDDY. J.,

Dated: 17.03.2005.

VRK.

To

1 The Secretary to Government,
Roads & Buildings Department, Secretariat, Saifabad,
Hyderabad.
2 The Collector, Guntur District.
3 The Commissioner, Municipal Corporation of Guntur,
Guntur.
4 The Superintending Engineer, R & B Department,
Guntur, Guntur District.

5. Two CCs to G.P. for Roads & Buildings, High Court Buildings, Hyderabad (OUT).

6. Two CD copies.

*Form-NIC-OGS/WA {**SPJS**}*

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY.

W.A.NO. 460 OF 2005.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 17.03.2005.